

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on policies and Practices for advanced metering, demand response, and dynamic pricing.

Rulemaking 02-06-001
(Filed June 6, 2002)

OPINION GRANTING INTERVENOR COMPENSATION

This decision awards the San Francisco Community Power Cooperative (SF Co-op) \$72,702.33 in compensation for its contribution to Decision (D.) 03-03-036.

I. Background

In Rulemaking (R.) 02-06-001, the Commission reviewed and analyzed energy demand flexibility. The rulemaking directed the development of policies and strategies that would enhance electric system reliability, reduce overall energy costs, and provide added environmental benefits through better management of how and when energy is used. This would be accomplished by offering options to customers to encourage load reduction and making their demand-responsive resources available to the overall system.

The rulemaking was served on the state's three largest electric utilities, Pacific Gas and Electric (PG&E), Southern California Edison (Edison) and San Diego Gas and Electric (SDG&E), and on the service lists of several major related proceedings. Other interested investor-owned utilities (IOUs), including

small and multi-jurisdictional types, consumer groups, and other parties were also encouraged to participate.

The rulemaking additionally invited the California Energy Resources Conservation and Development Commission (CEC), the California Power and Conservation Financing Authority (CPA), and other state agencies to participate in this proceeding. Both the CEC and the CPA have existing demand response programs underway and, in an effort to coordinate those programs with ours, both of these state agencies accepted the invitation to sit jointly with the CPUC in this proceeding in a policy-making role.

Due to its large scope and complex nature, this proceeding was separated into two phases, involving three different working groups of participants and two (large and small) customer classes. To simplify and clarify activities, the initial scoping memo called for a timeline of phased interim decisions to address the various issues. We issued our first Interim Decision (D.03-03-036) in Phase 1 on March 13, 2003, outlining a statewide demand response pricing pilot program for residential and small commercial customers. D.03-03-036 also adopted program cost recovery mechanisms and offered guidance on tariff filings.

Three consumer advocate groups, SF Co-op, The Utility Reform Network (TURN), and Consumers Union (CU) participated in the hearings, workshops and working group meetings held during the last year as this proceeding progressed. The three groups all actively participated and all timely filed a Notice of Intent (NOI) to claim compensation. SF Co-op filed a compensation request in response to D.03-03-036 (TURN and CU did not file), and this request is the subject of today's order.

On June 5, 2003 we issued a second Interim Decision in Phase 1 (D.03-06--032) relating to large customers. The rulemaking remains open to date. Under § 1804(c), compensation awards are normally made after a proceeding is closed. However, Rule 76.72 of the Rules of Practice and Procedure provides a broad interpretation of this law and allows for awards to be made if a decision resolves an issue, i.e., the interim decision is a final determination as to that issue. The issue of pilot programs for residential and small commercial customers was resolved by D.03-03-036.

II. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

III. Procedural Issues

The prehearing conference in this matter was held on July 16, 2002. SF Co-op filed its timely NOI on August 15, 2002. On September 16, 2002, Administrative Law Judge (ALJ) Carew issued a ruling that found SF Co-op to be a customer under the Public Utilities Code. SF Co-op filed its request for compensation on May 5, 2003, within the required 60 days of D.03-03-036. SF Co-op has satisfied all the procedural requirements necessary to make its request for compensation.

IV. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its NOI, SF Co-op asserted financial hardship and stated it then had 316 residential members and 28 business members. All of the residential members were defined as low to middle-income customers with annual electricity bills of \$2,000 or less. Of the 28 business members, 25 had annual electricity bills less \$5,000. The remaining three business members had annual

bills in excess of \$50,000. SF Co-op asserted that the three large business members do pay higher dues than the standard assessment, but that they are in no position to and do not subsidize the SF Co-op's efforts on behalf of its entire membership.

In the September 16 ruling, ALJ Carew determined that the presence of the three larger business members would not preclude a finding of eligibility for the broader organization, where the majority of members are residential and small business customers. As stated in the ruling, the Commission would determine, at the compensation stage, what percentage of the Co-op's total membership actually faced a significant financial hardship, and consistent with prior decisions, reflect that determination in its final compensation award. These prior decisions (see D.98-02-012, D.98-02-099 and D.02-06-014) generally state that any members with annual electricity bills over \$50,000 would not be considered as incurring hardship and therefore would not be eligible for compensation.

In its request for compensation, filed May 5, 2003, SF Co-op shows that its membership grew since the filing of the NOI and that it now has 833 members, including five with annual bills over \$50,000. In previous intervenor awards, we have used the \$50,000 figure as a benchmark to disallow any compensation, based on percent of total membership, to any customers with annual bills over this amount. Here, however, SF Co-op asserts that only residential and small commercial customers are impacted by D.03-03-036, and that therefore no disallowance should be made because of the five large business members. We agree. Using the pro rata formula described above, SF Co-op's award would only be reduced by 0.6% (828/833 ratio), or \$452. The \$50,000 standard is a valuable guideline, but we see no need to reduce the award for this reason here as no large customers were impacted by D.03-03-036.

V. Substantial Contribution

SF Co-op has been an active and productive participant. Besides attending all working group meetings and workshops, SF Co-op filed comments and responded to information requests from ALJ Carew. SF Co-op was instrumental in the development of the “Track B Pilot” program adopted by the Commission in D.03-03-036. In this decision (p. 26), we described the Track B Pilot program sponsored by SF Co-op as a “strong community based effort targeting low-income customers in an urban area suffering air quality problems due to aging power plants.” We also believe SF Co-op will play a “crucial role” (page 29) in the outcome of the pilot. The Track B Pilot targets 170 residential electric customers residing in the Bay View/Hunter’s Point and Potrero Hill districts of San Francisco who will be randomly selected to participate in the program. We believe this pilot program will result in a reduced reliance on the two aging power plants located in this area, and it could potentially be used in other areas of the State, as well. Considering these factors, we find that SF Co-op made a substantial contribution to D.03-03-036.

VI. Reasonableness of Requested Compensation

SF Co-op requests \$75,233.58 for its participation in this proceeding, as follows:

Attorney Fees

Irene K. Moosen	63 hours @ \$265/hour	\$16,695.00
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Expert Witness/Consultant Fees

Steven J. Moss	225 hours @ \$175/hour	\$39,375.00
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Dr. Richard McCann	105 hours @ \$175/hour	\$18,375.00
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<u>Business Expense</u>		<u>\$ 788.58</u>
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<u>Total</u>		<u>\$75,233.58</u>
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As shown, the total compensation requested is \$75,233.58. We will adjust this amount in two areas. First, we will decrease the total by \$2,597.50 to adjust for time spent preparing the compensation claim. As outlined in D.98-04-059 and subsequent Commission orders, our policy is to allow for compensation award preparation time at one –half of the normal rates billed. Moosen (13 hours @ \$265), Moss (9 hours @ \$175), and McCann (1 hour @ \$175), all claimed the full hourly rate. Accordingly, Moosen’s portion for preparation time will be reduced by \$1,722.50 ($\$265 \times 13 \times .5$), Moss’s by \$787.50 ($\$175 \times 9 \times .5$), and McCann’s by \$87.50 ($\$175 \times 1 \times .5$). Second, we will adjust the amount upward by \$66.25 to account for a miscalculation for the total hours for Moosen (total should be 63.25 hours – $0.25 \times \$265 = \66.25). The adjusted total award will be \$72,702.33.

The components of this request constitute reasonable fees and costs when compared to market rates for similar services from comparably qualified persons. Attorney Moosen has 15 years’ experience in regulatory and legal

matters relating to energy and consumer interests, including more than 10 years with the Commission's Legal Division. Moss is a partner in the consulting firm M.Cubed, specializing in resource economics issues. He is the Executive Director of SF Co-op, has an advanced degree in public policy, and is currently an adjunct lecturer in public administration at San Francisco State University. McCann is also a partner of M.Cubed and holds a Ph.D degree in agriculture and resource economics. Moosen, Moss and McCann have all testified or represented clients before the Commission and all have been granted intervenor compensation awards in prior cases.

The hourly rates billed by Moosen (\$265), McCann and Moss (\$175) represent increases from prior fee levels awarded to each, but we believe these current rates are at or below market rates for attorneys and experts with similar educational/experience backgrounds in similar cases before the Commission. We find these rates to be reasonable. The claimed amount for business expenses constitute approximately 1% of the total award, which we also consider reasonable.

VII. Award

We award SF Co-op \$72,702.33. This calculation is based on the hourly rates described above, plus other reasonable costs. Consistent with previous Commission decisions, we will order that, after July 19, 2003 (the 75th day after SF Co-op filed its compensation request), interest be paid on SF Co-op's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until the utilities make full payment.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

We will direct that all three larger electric utilities (PG&E, Edison, and SDG&E) share proportionally in the payment as this proceeding has statewide implications and the Track B Pilot program has potential use statewide.

VIII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

IX. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Lynn T. Carew is the assigned ALJ in this proceeding.

Findings of Fact

1. SF Co-op represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.
2. SF Co-op filed its NOI to claim compensation on August 15, 2002, and its request for compensation on May 5, 2003.
3. The individual economic interests of SF Co-op members are small in comparison to the costs incurred in effectively participating in these proceedings.
4. SF Co-op participated continuously and extensively in this proceeding.
5. SF Co-op requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience. SF Co-op's other proceeding-related expenses are reasonable.

6. The total of these reasonable fees and expenses is \$72,702.33.

Conclusions of Law

1. SF Co-op has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.03-03-036.

O R D E R

IT IS ORDERED that:

1. The San Francisco Community Power Cooperative (SF Co-op) is awarded \$72,702.33 as compensation for its substantial contributions to Decision 03-03-036.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay SF Co-op the respective utility's share of SF Co-op's total award. The shares shall be computed on the basis of each utility's percentage of the total retail sales of electricity (measured in kilowatt-hours) in 2002 (the year most costs were incurred) for all three utilities.

3. PG&E, Edison and SDG&E shall also pay interest on the award beginning July 19, 2003, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decisions:	D0303036
Proceeding:	R0206001 (assigned to ALJ Carew)
Author:	ALJ Koss (Intervenor decision only)
Payers:	Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason
San Francisco Community Power Co-operative (SF Co-op)	5/5/2003	\$75,233.58	\$72,702.33	(1) Claim prep expense reduced by 50%. (2) Under-calculation of hours (0.25 hours)

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Irene	Moosen	Attorney	SF Co-op	\$265	2003	\$265
Steven	Moss	Policy Expert	SF Co-op	\$175	2003	\$175
Richard	McCann	Policy Expert	SF Co-op	\$175	2003	\$175